

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SHAHRAM DAVID LAVIAN,

Plaintiff,

- against -

IRA DANIEL TOKAYER, ESQ.,

Defendant.
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USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>March 27, 2009</u>
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08 Civ. 938 (PAC) (GWG)

ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

Pro se Plaintiff Shahram David Lavian brings this action against Defendant Ira Daniel Tokayer for legal malpractice. Tokayer served as Lavian's attorney from 2001 or 2002 until 2005 and represented Lavian in several related matters in New York state court: Darvish v. Lavian, Index No. 9056/01 ("Darvish I"); Lavian v. Darvish, Index No. 115301/01 ("Darvish II"); Darvish v. Haslacha, Index No. 123089/01 ("Haslacha I"); City of New York v. Haslacha, Index No. 105946/01 ("Haslacha II"); and NYCTL 1998-1 Trust v. Haslacha, Inc., Index No. 105946/02 ("Haslacha III").

In his Complaint, Lavian argues that Tokayer, during the course of these representations: (1) failed to properly conduct discovery and take depositions; (2) made decisions that were counter-productive to Lavian's interests in a lawsuit against Lavian's former attorney, Jack Bleier; (3) failed to defend against counterclaims in Darvish I, Haslacha I and Darvish II; (4) failed to bring counterclaims against the adverse parties and obtain legal fees in Haslacha II; and (5) misrepresented facts to serve his own interests in 2004 and 2005.

Tokayer moved to dismiss the Complaint, and Lavian did not oppose the motion. This Court referred the matter to Magistrate Judge Gabriel W. Gorenstein, who issued a Report and

Recommendation (“R&R”) on January 27, 2009, recommending that Defendant’s motion to dismiss be granted. Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), Magistrate Judge Gorenstein provided the parties with ten days from service of the R&R to file written objections, and advised that failure to raise timely objections would preclude challenging the R&R on appeal. (R&R 9). No objections to the R&R have been filed by either party.

“To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). Upon review, the Court finds no clear error in Magistrate Judge Gorenstein’s analysis.

First, Lavian’s claims relating to Darvish II are barred by collateral estoppel because the court in that case explicitly rejected Lavian’s claims of malpractice. (R&R at 4-7.)

Second, Lavian’s claims relating to Darvish I and Haslacha III are barred by the statute of limitations. Magistrate Judge Gorenstein correctly found that under New York law, a claim for legal malpractice must be brought within three years of accrual. Lavian filed his present action on January 28, 2008, and both Darvish I and Haslacha III concluded more than three years prior to that date. (R&R at 7-8.)


Finally, based upon evidence submitted by Tokayer in support of his motion to dismiss, Magistrate Judge Gorenstein found that Tokayer did not represent Lavian in Haslacha I. As Lavian did not submit any evidence to the contrary, Tokayer’s evidence is uncontroverted. (R&R at 8-9.)

Accordingly, the Court adopts Magistrate Judge Gorenstein’s R&R in its entirety. Defendant’s motion to dismiss is GRANTED. Pursuant to 28 U.S.C. § 1915(a)(3), I find that

any appeal from this order would not be taken in good faith. Plaintiff did not file objections to the Report and Recommendation, as he was required to do in order to preserve his right to appeal. The Clerk of the Court is directed to enter an Order closing this case.

Dated: New York, New York
March 27 2009

SO ORDERED


PAUL A. CROTTY
United States District Judge

Copies mailed to:

Honorable Gabriel W. Gorenstein
United States Magistrate Judge

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